Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1994

JOHN DANIEL MACLEOD III,

Petitioner,

vs.

JAMES O. BROCCOLETTI, et al.,

and

DAVID R. FABER II, et al.,

and

MILLER M. RYANS, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Virginia

PETITION FOR WRIT OF CERTIORARI

JOHN DANIEL MACLEOD III, pro se
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27 pp

QUESTION PRESENTED

Does the systematic denial of due process and other rights and immunities, guaranteed by the Constitutions of the United States and the Commonwealth of Virginia, constitute, in an individual case, such a grave threat to the Republic as to compel this Court's intervention?

STATEMENT OF THE PARTIES

Your Petitioner is JOHN DANIEL MACLEOD III. The Respondents, as have thus far been conclusively inculpated, named and served in the underlying action, are Doctor DAVID R. FABER II, Attorney JAMES O. BROCCOLETTI, Attorney J. GERARD ZOBY, Chief Justice HARRY L. CARRICO, Assistant Commonwealth's Attorney ROBERT F. MCDONNELL, Clerk J. CURTIS FRUIT, Judge PHILLIP L. RUSSO, Judge AUSTIN E. OWEN, Deputy WILLARD C. SMITH, Deputy DONALD V. HALEY, Reporter CATHERINE B. EDWARDS, Judge KENNETH N. WHITWHURST, the NATIONAL ORGANIZATION FOR WOMEN – DEBORAH E. MUNDY President, Detective J. D. PRICE, Detective ROBERT MANZIONE, Officer RICHARD A. COOPER, Judge ROBERT G. DOUMAR, Assistant Public Defender THERESA B. BERRY, Attorney General MARY SUE TERRY, Judge JAMES W. BENTON JR., Doctor MILLER M. RYANS, Judge SAMUEL W. COLEMAN JR., Judge J. H. WILLIS JR., Justice ASBURY C. COMPTON, Justice ROSCOE B. STEPHENSON, Justice CHARLES S. RUSSELL, Justice HENRY H. WHITING, Justice ELIZABETH B. LACY, and Justice LEROY R. HASSEL. One additional Respondent, Judge JOHN K. MOORE, was initially named but as it later became apparent that he was entitled to the salvation of Virginia's doctrine of judicial immunity, your Petitioner concurred in his demurrer alleging as much and now makes no contest for the action having been dismissed as to him.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

Petitioner, John Daniel MacLeod III, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia entered in the above cause on the 30th day of March, 1995.

OPINION BELOW

The decision of the Circuit Court of the City of Norfolk dated July 18th, 1994, is attached as Appendix A. The decision of the Supreme Court of Virginia dated March 30th, 1995, is attached as Appendix B.

JURISDICTION

The decision of the Virginia Supreme Court was entered on the 30th day of March, 1995. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

(1) Section One of the Fourteenth Amendment of the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United

States; nor shall any State deprive any person of their liberty, or property without due process of law; nor deny to any person the equal protection of the law.

(2) The Seventh Amendment of the United States Constitution provides:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

RULES INVOLVED

(1) Rule 38(a) of the Federal Rules of Civil Procedure provides:

The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

STATUTES INVOLVED

(1) § 8.01-336 of the Code of Virginia provides:

The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties.

(2) § 8.01-275 of the Code of Virginia provides:

No action or suit shall abate for want of form where the motion for judgment or bill of complaint sets forth sufficient matter of substance for the court to proceed upon the merits of the cause. The court shall not regard any defect or imperfection in the pleading, whether it has been heretofore deemed mispleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment, according to law and the very right of the cause, cannot be given.

(3) § 19.2-10 of the Code of Virginia provides:

No proceeding of outlawry shall hereafter be instituted or prosecuted.

STATEMENT OF THE CASE

Innocent, in fact, of grievous felony charges lodged against him in November of 1989, your petitioner was nevertheless caused to suffer a hopelessly infirm yet persisting criminal judgment relative thereto as the direct proximate result of the conspiratorial efforts of Assistant Commonwealth's Attorney Robert F. McDonnell and his privately retained defense counsel, later turned advisory counsel, James O. Broccoletti, who were aided in their efforts by the concurring tortious acts of a host of others including, but not limited to, three judges of the trial court who had acted so far outside the bounds of their jurisdiction as to have abrogated the liberal protection of Virginia's doctrine of judicial immunity; yet a fourth

judge, who was initially charged but later realized to have been saved, only escaped by virtue of the forum shopping activities of the conspirators which enabled him to avoid having to confirm his inculpatory act.

Having, thereafter, scotched an attempt to preserve the voidable judgment through the appellate courts with the selfdefeating petitions of a court appointed attorney that had been proceeding with neither his knowledge nor consent, your petitioner was able to bring, in time and four square, to the attention of both appellate courts, not only the facts of his having been put to trial out of time, denied the effective assistance of counsel, denied compulsory process, and the right to testify after having been denied, first reasonable and later all, access to the courts, any of which should have proved fatal to the judgment, but, was also able to bring forward conclusive documentary evidence that had been discovered and proved, beyond doubt, the collusion which had existed between the principal respondents and in the face of which the judgment could not legitimately have stood by any means; yet, following in the footsteps of the judges of the trial court, both the judges of the appellate court, upon the pretext of an overt lie that was promptly refuted, and the justices of the Virginia Supreme Court, literally without any pretext, refused to give the case a valid hearing and, with no possible jurisdiction under either Constitution to make such an election, brazenly stepped out from under the canopy of immunity to join their fellows.

Thus it was that, though having been denied relief at every turn, your Petitioner, not without recourse, due to the noted wisdom of the founders which had periodically been refined and reinforced by equally wise legislatures,

took resort to the alternative and began filing suit, on or about May 5th, 1992, in the home court of the principal Respondent, demanding compensation individually of each of the tortfeasors, most of whom had committed acts deemed so egregious under Virginia law as to make them liable upon the mere commission and without more, and, with all necessary parties culpable, jointly and severally for the cumulative effect of their acts which they had or should have foreseen.

A good deal of wrangling over the following two (2) years, as numerous Respondents attempted ineffectively to avoid your Petitioner's action, which was not only meritorious but conspicuously well pleaded, were sometimes interesting but produced little of interest to this inquiry. Essentially, having held the entire matter in pectore for an extraordinary twenty-six (26) months, the presiding judge finally decided to do something even if it was wrong and, with no prior notice to the parties, entered a self-generated order dismissing the action as to each and every Respondent upon the grounds asserted when, in fact, none had made a meritorious demand, most could not have set up a bar to the action by any means, and some did not even have a potentially dispositive pleading before the court upon which relief could have been granted.

As the trial court had afforded the parties no opportunity to raise their objections prior to the entry of the dispositive order, your Petitioner registered his by formal Bill of Exceptions filed on or about the 17th day of August 1994, [Appendix C] complaining, inter alia, at ¶ 17, of the lack of proper notice. (Even as this Petition was being drafted your Petitioner, while attempting to

ascertain the exact date on which the above described Bill of Exceptions was actually entered, found, despite three separate return receipts for certified mail, one copy having been filed separately for each component of the record of the still trifurcated matter, showing receipt by one Kelly Meadows, agent for Norfolk Circuit Court Clerk William T. Ryan, that no corresponding entries were found in the docketing sheets as they were when the matters had been forwarded up to the Virginia Supreme Court in November of 1994.)

The matter was promptly appealed to the Supreme Court of Virginia which affirmed the action of the trial court without substantial comment on the 30th day of March, 1995. The court also found that the trial court's ruling had not constituted a final decision with respect to two Respondent Doctors; however, as the matter had been initially trifurcated, due to the notice and tolling provisions applicable to these two Respondents, and the records had yet to be consolidated by formal order, this appears to have been a nice technical point of no present import.

ARGUMENT

The statutory embodiment of the well reasoned decision to abandon the practice of declaring certain persons to be dead in the eyes of the law, Virginia's prohibition of outlawry proceedings is reflective of the hard learned lesson that, in a more or less fully populated and civilized world, banishment is no longer a practical solution, if, in fact, it ever was. The truth is what the truth is and it can

neither be created nor changed by judicial edict; people exist and will continue to exist with the same need to remain secure in their life, liberty, and property; needs which can now only be effectively provided by some form of government. Consequently, were we to allow a return to the practice, it would have the unfortunate effect of compelling persons so excluded to subscribe to some alternative or become sovereigns within sovereigns.

To the uneducated observer, such a result might not seem untenable given what might appear to be an almost limitless morass of distinct state, local, and federal governments each plugging along in reasonable harmony with all of the others, but, those who know better, that all power, whether delegated upwards or downwards and whether temporarily or permanently assigned, nevertheless, derives from a single source; the states which cannot, in fact, afford the competition for, though, no doubt, they could handily sustain the appearance of one, dozens, and perhaps hundreds, bitter experience has repeatedly shown that where bad precedent has been set it will be abused; where there is no enforcement there will be no law.

CONCLUSION

Were this matter to be left uncorrected it would constitute a tacit return to the practice of outlawry which, in this day and age would constitute a grave threat to the Republic. The Court should take up this case and remand it to the state courts for a proper resolution.

Respectfully submitted,

JOHN DANIEL MACLEOD III, pro se
Bland Correctional Center
Route 2, Box 143
Bland, VA 24315-9615

VIRGINIA: In the Circuit Court of the City of Norfolk

JOHN DANIEL MAC LEOD, III,
Plaintiff

v. **DOCKET NO. L92-1549**

JAMES O. BROCCOLETTI, et al,
Defendants.

ORDER

The Court, having considered the Bill of Complaint, all pleadings, motions to dismiss, demurrers, motions for summary judgment, all other motions and authorities and arguments made, and it appearing to the Court that all defendants should be accorded the relief requested by each, it is hereby

ORDERED that each defendant's motion to dismiss, motion for summary judgment or demurrer, be and the same hereby is granted and that plaintiff's suit against each named defendant is hereby DISMISSED and that each defendant be awarded his costs and attorney fees herein expended.

It is further ORDERED that the endorsement of counsel and the plaintiff hereon is waived pursuant to the Rules of the Supreme Court and that the exception of plaintiff to these rulings is noted.

It is further ORDERED that the Clerk send duly certified copies of this Order to the plaintiff and all counsel of record.

This case is hereby removed from the docket of this Court.

ENTERED: 7/18/94

/s/ John C. Morrison, Jr.
John C. Morrison, Jr., Chief Judge

A COPY TESTE:
WILLIAM T. RYAN, CLERK
NORFOLK CIRCUIT COURT

BY /s/ Karen Slater, a Deputy Clerk authorized to sign on behalf of William T. Ryan.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday *the* 30th *day of* March, 1995.

John Daniel MacLeod, III, Appellant,

against Record No. 941746
Circuit Court Nos. L92-2378,
L92-2591 and L92-1549/L3456-94

James O. Broccoletti, et al., Appellees.

From the Circuit Court of the City of Norfolk

The Court has reviewed the record in this case and considered the argument submitted in support of the granting of an appeal. Finding that the appellant has failed to appeal from a final judgment, the Court dismisses the petition for appeal as to Case Nos. L92-2378 and L92-2591. Accordingly, to the extent the appellant is appealing the judgment in Case No. L92-1549/L3456-94, the Court is of opinion there is no reversible error in that judgment and the petition for appeal is refused.

A Copy,

Teste:

David B. Beach, Clerk

By: /s/ illegible
Deputy Clerk

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN DANIEL MACLEOD III,

Plaintiff,

v. At Law No. L92-1549

JAMES O. BROCCOLETTI, et al.,

Defendants,

and,

JOHN DANIEL MACLEOD III,

Plaintiff,

v. At Law No. L92-2378

DAVID R. FABER II, et al.,

Defendants,

and,

JOHN DANIEL MACLEOD III,

Plaintiff,

v. At Law No. L92-2591

MILLER M. RYANS, et al.,

Defendants.

BILL OF EXCEPTIONS

NOW COMES the Plaintiff, JOHN DANIEL MACLEOD III, in proper person, and herein for his exceptions to the Court's having granted unilateral relief to the Defendants in this matter by final judgment ORDER entered on the 18th day of July, 1994, states:

1. That, in addition to all of the reasons set forth in PLAINTIFF'S RESPONSE TO DEFENDANT BROCCOLETTI'S MOTION TO DISMISS, filed in this matter on or about the 26th day of October, 1992, the court erred in granting relief to Defendant JAMES O. BROCCOLETTI, upon his plea that the Plaintiff should be collaterally estopped from pursuing his cause in consequence of the presumably illegal and void, yet persisting, criminal conviction at the core of this matter, as such a result would be in direct conflict with our ancient policy, recently reaffirmed in *Selected Risks Ins. Co. v. Dean*, 233 VA 260, 355 S.E.2d 579 (1987), that, except in the narrow context of the arson conviction in *Eagle, etc. v. Heller*, 149 Va. 82, 140 S.E.2d 314 (1927), criminal judgments, whether by guilty plea or adjudicated guilt, should have no preclusive effect on subsequent civil litigation, and rightly enough as, were it otherwise, venal counsel would be enabled to set up the product of their own wrongdoing as a defense against civil liability, ironically the very accusation they would attempt to press against the Plaintiff who must, in fact, for the purposes of summary judgment be presumed quite innocent of any wrongdoing, moreover, as normally forthright defense counsel, guilty of nothing more than honest mistake, could not remain competitive without availing themselves of the same protection, inevitably all would become so beholden, for their assistance in the procurement and preservation of essential protection, as to become mere minions of a government entity which already provides Judge and prosecutor, has publicly gloated over its ability to dictate the identity of its strategic members in contravention of the established system of checks and balances, and routinely abuses the

rules of evidence and its discretion, obfuscating both the truth and the law, to effectively usurp the function of the jury that defense counsel, rather than continuing to provide the last bastion against, would become the final element in such a formidable instrument of tyranny, so resistant to alteration or reform, that the loyal members of the community would be compelled to abolish it.

2. That, for all of the reasons set forth in paragraphs 33, 34, 35, and 36 of PLAINTIFF'S RESPONSE TO CERTAIN DEMURRERS filed in this matter on or about the 11th day of August, 1992, Plaintiff's letter to Judge John C. Morrison, a copy of which was filed with the Clerk on or about the 24th day of September, 1992, paragraph 6 of Plaintiff's MOTION TO STRIKE filed in this matter on or about the 4th day of November, 1992, and paragraph 1 supra, the trial court should not have granted relief to Defendant public defender THERESA B. BERRY upon her patently infirm plea of sovereign immunity.

3. That, for all of the reasons set forth in PLAINTIFF'S RESPONSE TO CERTAIN DEMURRERS, paragraphs 1 through 29 inclusive, filed in this matter, on or about the 11th day of August, 1992, the trial Court erred in granting relief to Defendants PHILLIP L. RUSSO, AUSTIN E. OWEN, KENNETH N. WHITEHURST, ROBERT G. DOUMAR, JAMES W. BENTON JR., SAMUEL W. COLEMAN JR., J. H. WILLIS JR., HARRY L. CARRICO, ASBURY C. COMPTON, ROSCOE B. STEPHENSON JR., CHARLES S. RUSSELL, HENRY H. WHITING, ELIZABETH B. LACY, and LEROY R. HASSEL upon their various pleas of judicial immunity as, none of the specific acts alleged against these Defendants being encompassed within the existing criteria for determining immunity, the

Court's ruling would dangerously overextend the doctrine of judicial immunity beyond any conceivable necessity; its being little more than conjecture that the feared flood of vexatious litigation would actually materialize in the absence of any immunity.

4. That the trial Court erred in granting Defendant police officers J. PRICE, ROBERT MANZIONE, and RICHARD A. COOPER's joint MOTION FOR SUMMARY JUDGMENT as it was predicated solely upon their proffer of a transcript of the Plaintiff's incident report to the police departments emergency operator moments after the incident which gave rise to the criminal prosecution at the core of this matter. As a matter of law, the Plaintiff, being neither a fully informed judge nor a fully informed and properly instructed jury, was not competent to have made a valid finding of actual guilt or innocence and therefore could not have made any statement preclusive of that issue nor could such a morsel of evidence have provided the trial court with conclusive evidence of any issue as, when taken together with the other evidence, the Plaintiff's res gestae statements are, in fact, entirely consistent with his ultimate plea of self defense, all of which is largely irrelevant to the issue of whether or not the Plaintiff might be due compensation from these Defendants in consequence of their having intentionally given colored, previously unreported, and perjured testimony in aide of a malicious prosecution where the Plaintiff has only to prove that the conviction at issue is illegal and void as a matter of law and yet exists due to the tortious acts of these Defendants and their Codefendants whereafter the onerous burden of attempting to prove, with the requisite degree of specificity, that in spite of their tortious acts

some particular conviction would have resulted and some particular punishment would have been imposed devolves entirely upon the Defendants.

5. That, for all of the reasons set forth in paragraph 31 of PLAINTIFF'S RESPONSE TO CERTAIN DEMURRERS, filed in this matter on or about the 11th day of August, 1992, the trial court erred in granting relief to Defendant MARY SUE TERRY upon her plea of prosecutorial immunity.

6. That, for all of the reasons set forth in paragraphs 37 and 38 of PLAINTIFF'S RESPONSE TO CERTAIN DEMMURRERS, filed in this matter on or about the 11th day of August, 1992, the trial court erred in granting relief to Defendant ROBERT F. MCDONNELL upon his plea of prosecutorial immunity.

7. That, in addition to all of the reasons set forth in paragraph 42 of PLAINTIFF'S RESPONSE TO CERTAIN DEMURRERS, filed in this matter, on or about the 11th day of August, 1992, the trial court erred in granting relief to Defendant J. GERARD ZOBY as, though subsequent investigation has confirmed that, pursuant to Title 50 of the Code of Virginia, this Defendant would be presumptively liable under any theory of the case, the record is devoid of any evidence, and the Court took no notice of any facts sufficient to sustain this Defendants mere denial of liability.

8. That, for all of the reasons stated in paragraph 32 of PLAINTIFF'S RESPONSE TO CERTAIN DEMURRERS, filed in this matter, on or about the 11th day of August, 1992, the trial Court erred grievously in granting relief to Defendant J. CURTIS FRUIT as, being statutorily liable

upon the mere fact that documents are missing from the record of the criminal matter, this Defendant could not possibly have demurred to the action.

9. That, for all of the reasons stated in paragraphs 39 through 41 of PLAINTIFF'S RESPONSE TO CERTAIN DEMURRERS, filed in this matter, on or about the 11th day of August, 1992, the trial Court erred in granting relief to Defendants WILLARD C. SMITH and DONALD V. HALEY upon their pleas of res judicata.

10. That, in addition to all of the reasons set forth in PLAINTIFF'S RESPONSE TO DEFENDANT RYAN'S DEMURRER, filed in this matter on or about the 19th day of October, 1992, and PLAINTIFF'S MOTION FOR A MORE COMPLETE STATEMENT OF THE COURT'S OPINION, filed in this matter on or about the 21st day of December, 1992, the trial Court erred in granting relief to Defendant MILLER M. RYANS upon his Demurrer as it spoke of new matter and could not properly have been considered as a result.

11. That, the trial Court erred in granting relief to recalcitrant Defendant CATHERINE B. EDWARDS as it was apparent from the record that she was aware of the action and actively avoiding service.

12. That, the trial Court erred in granting relief to the NATIONAL ORGANIZATION FOR WOMEN, Deborah E. Mundy, President, as they were in default and no longer entitled to contest anything other than the amount of any unliquidated damages.

13. That, in addition to all of the reasons set forth in PLAINTIFF'S MOTION TO STRIKE DEFENDANT

FABER'S MEMORANDUM, filed in this matter, on or about the 19th day of April, 1993, the trial Court erred in granting relief to Defendant DAVID R. FABER II as he had no proper pleading before the Court upon which relief might have been granted for, having initially filed a false demurrer, on or about the 14th day of August, 1992, Defendant Faber, being graciously allowed to withdraw same and plead over again by any means, elected to answer on September 17th, 1992, by filing his Grounds of Defense but then, on April 7th, 1993, filed a federal style Memorandum, alleged to support a "previously filed" demurrer, and moved for judgment thereon, yet as no such demurrer could be found and he had not sought leave to withdraw his answer, the motion could not be considered, and still later, on July 8th, 1994, Defendant Faber sought leave to withdraw his answer and resolve the matter on his demurrer, now alleged to have been filed on the same date as the aforementioned memorandum but still not to be found in the record, whereforall, the Defendant did not have a potentially dispositive pleading before the court nor would it have been appropriate for the Court to have allowed his memorandum to stand in place of the phantom as its references thereto would have caused untenable confusion in the record. Furthermore, even if the Court had improperly elected to allow Defendant Faber's Memorandum to stand in place of the phantom, no relief would have been warranted as the court should not have allowed itself to have been misled by any of Defendant Faber's gross misstatements of tort theory or his erroneous assessment of burdens where, as hereinbefore mentioned, Defendant Faber would also wish the Court to believe that the Plaintiff

might be foreclosed from pursuing his cause by virtue of the inherent difficulty of proving with reasonable certainty what sort of intermediate verdict a jury might have returned when, in fact, the Plaintiff needed only, and could quite easily, have proven that the judgment was illegal and void, that it existed even so, and that it had been procured and preserved as a direct result of the concurring tortious acts of Faber and his Codefendants, whereafter, the daunting burden of proving that some particular conviction would have occurred and some particular punishment would have been imposed even so would have fallen entirely upon the Defendants who, had they succeeded in doing so, would only have been enabled to set up the result in mitigation of damages, nor should the Court, in all events, have allowed itself to be distracted from the fact that the absolute minimum allegation against this Defendant, that of having caused an unwarranted commitment to an institution devoted to the evaluation and treatment of the criminally insane, even were actual intent neither alleged nor found, would still constitute negligence so wanton as to justify some recovery, without more, and thus, could not under any circumstances have been reached by demurrer.

14. That, for all of the reasons stated in PLAINTIFF'S MOTION TO DENY & STRIKE DEFENDANT'S MOTION TO COMPEL DISCOVERY/PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S GROUNDS OF DEFENSE the trial court erred in failing to grant the relief requested therein.

15. That, for all of the reasons set forth in Plaintiff's letter to Judge John C. Morrison, dated September 24th, 1992, and Plaintiff's MOTION TO STRIKE, filed in this

matter, on or about the 4th day of November, 1992 the Court erred in failing to strike the objectionable material complained of.

16. That, in addition to all of the reasons stated in paragraph 6 of the Plaintiff's MOTION TO DENY DEFENDANT'S DEMURRER, filed in this matter on or about the 24th day of August, 1992, the trial Court erred in failing to grant the sanction, against Defendant DAVID R. FABER II, requested therein as, though the Plaintiff would be the first to agree that the Courts should err on the side of caution whenever the question involves subjective criteria else few litigants would retain the courage to advance the novel arguments which help the law evolve, however, where, as in the instant case, a demurrer is found to be patently false upon objective criteria, a finding which at one time would have placed the Defendant in default, the Court should impose an appropriate sanction else there will be no end to the appearance of such specious pleadings.

17. That, the trial Court erred in entering its dispositive Order without giving any notice to the parties of its decision. Having held the matter in pectore for some time after the last hearing of the matter, the trial Court should have advised the parties of its findings, preferably by letter opinion, some weeks before the entry of final judgment in order that they should have been able to evaluate the Court's reasoning and the accuracy of its findings and, should they have been so advised, draft any necessary motions and arrange to bring themselves before the Court "prior" to the entry. In the instant case, however, incarcerated hundreds of miles from the trial Court and only becoming aware of the entry some 9 days after the

fact, the Plaintiff was effectively foreclosed from exercising both his pre and post entry options as the final judgment Order had passed beyond the control of the trial Court before any effective action could be taken.

18. That, the trial Court erred in dismissing the action after sustaining various demurrers without affording the Plaintiff a reasonable opportunity to seek leave to amend and cure the perceived defects.

19. That, the Court's ruling is insufficient to fairly advise the parties or the appellate courts of its reasoning and is not, therefore, susceptible of fair debate.

20. That, the Court's decision granting judgment in favor of each and every Defendant is plainly wrong. In fact, irrespective of what might ultimately have been proven, that of the numerous several torts alleged against numerous Defendants, the Plaintiff might have drawn his Motion For Judgment so inartificially as to have failed to state even one viable cause of action would seen [sic] nearly impossible, but when, as previously noted, it is considered that in at least one case, that of Defendant J. Curtis Fruit, the Plaintiff is entitled to a statutorily mandated penalty upon demand, it becomes plainly impossible.

/s/ John D. MacLeod
John Daniel Macleod III,
183041
Bland Correctional Center
Route 2, Box 143
Bland, VA 24315-9615

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that a true copy of the foregoing BILL OF EXCEPTIONS has, on the 17th day of August, 1994, been mailed to the following:

Martha Withrow Elder
Pender & Coward, P.C.
Greenwich Centre, Fourth Floor
192 Ballard Court
Virginia Beach, VA 23462

F. Bradford Stillman
Richard J. Cromwell
McGuire, Woods, Battle & Boothe
9000 World Trade Center
Norfolk, VA 23510

Gregory E. Lucyk
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101 North Eighth Street
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Conrad M. Shumadine
Mark D. Stiles
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1800 Nationsbank Center
Norfolk, VA 23510

Catherine B. Edwards
1604 Old Donation Parkway
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National Organization for Women
Deborah E. Mundy, President
320 River Forest Road
Virginia Beach, VA 23454-3286

L. Steven Emmert
Assistant City Attorney
Municipal Center
Virginia Beach, VA 23456

J. Phillip Krajewski
Assistant United States Attorney
World Trade Center, Suite 8000
101 West Main Street
Norfolk, VA 23510

David C. Bowen
Willcox & Savage
1800 Nationsbank Center
Norfolk, VA 23510

/s/ John D. MacLeod